EXCISE

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DEPARTMENT OF STATE

ACTION MEMORANDUM

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17 APR 1980

To: The Deputy Secretary

From: EB - Deane R. Hinton
HA - Patricia M. Derian

Human Rights and the Reimbursable Development Program (RDP)

80 APR 19 PM 5:33

Issue for Decision

Whether the activities of RDP should be reviewed from a human rights perspective.

Essential Factors

RDP activities are based upon two authorities of the FAA:

-- Section 607(a), which authorizes USG agencies to provide services to developing countries on a reimbursable basis;

-- Section 661, which authorizes the use of funds ($3.8 million in FY 80) to work with friendly countries to facilitate open and fair access to natural resources of interest to the US and to stimulate reimbursable aid programs consistent with Part I. Section 661 has been construed to allow funds to be used for feasibility studies or other activities that could lead to private sector sales.

Both Sections 607 and 661 provide that RDP's activities under Section 607 should be consistent with Part I of the FAA. Section 661 also provides "that funds used for the purposes of this section may be used notwithstanding any other provisions of this Act."

DEPARTMENT OF STATE A/ODC/IMR
REVIEWED BY R Valan DATE 12/23/83
RDS ☐ or XDS ☐ EXT. DATE _____
TO ADM. _____ REVIEW BY _____
ENDORSE EXCISION MARKINGS ☐
DECLASSIFIED ☐ RELEASABLE
RELEASE DENIED ☒ in part
PA or FOI EXEMPTIONS 552(b)(5)

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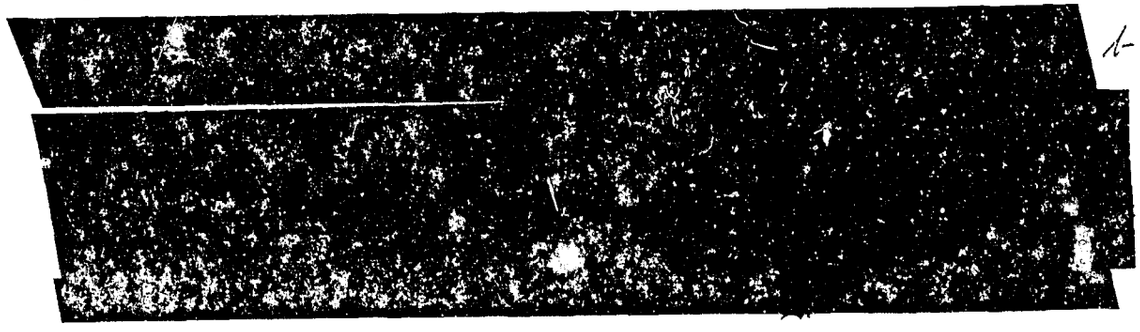
At present, RDP's activities are being reviewed informally by HA, outside the normal procedures of the Interagency Group. IDCA, AID and HA have proposed that the human rights review of RDP be regularized. Although under Section 661 such a review appears to be not mandatory, AID believes it is in keeping with the purposes of Part I of the FAA and with Presidential Directive/NSC-30. In Part I of the FAA, one of the goals of U.S. development policy is the promotion and enhancement of individual civil and economic rights. Presidential Directive 30 states that it is a major objective of U.S. foreign policy to promote the observance of human rights, and it calls for the use of the full range of diplomatic tools. It also provides that countries with poor or deteriorating human rights records will receive less favorable consideration in the allocation of foreign assistance. Finally, the Directive prohibits "any action which would result in material or financial support to the police, civil law enforcement authorities, or others performing internal security functions of governments engaged in serious violations of human rights."

The proposed review procedure (annex II) is less onerous than that for MDB loans in recognition of the fact that RDP stimulates development activities that lead to the export of US goods and services. For example, the procedure specifically excludes RDP from having to meet BHN criteria and provides for an advance six month clearance. The RDP staff have stated that this procedure would not adversely effect their ability to carry out their programs.

HA notes that although section 607(a) programs do not constitute assistance, and although the "notwithstanding other provisions" clause may properly exempt section 661 grant activities from legal requirements for their review, instances may well occur where the provision of US technical assistance to a particular activity of a particular government may be especially inappropriate. It is for such reasons that review is desirable.



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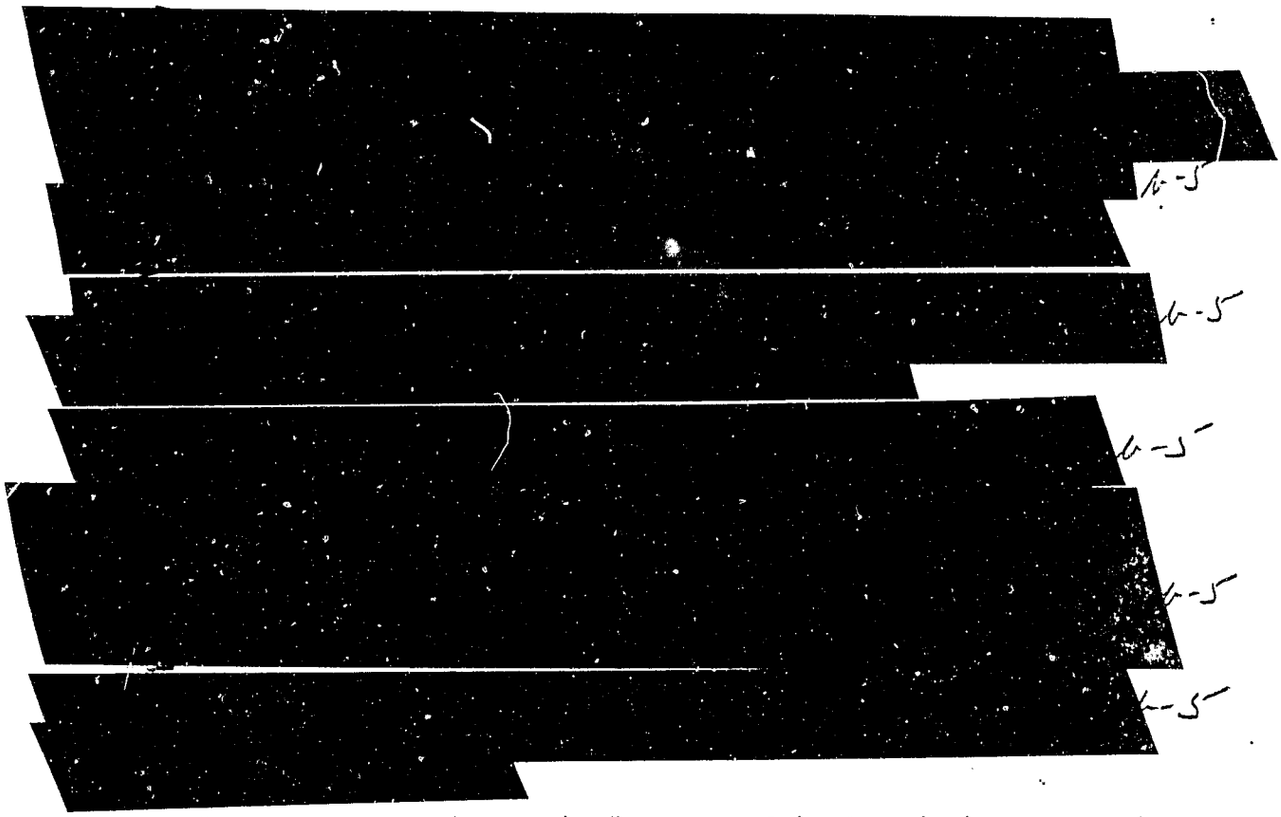

A "Legal Framework Section" prepared by L and the proposed review procedure are attached as Annexes I and II.

Recommendation

APR 19 1980

That RDP's activities be reviewed by the Working Group in accordance with the attached procedure

Alternatively, that our human rights policy not be applied to RDP

Drafted:EB/IFD/ODF:JCHolzman:kjc
12/6/79 x22178 updated 4/15/80 114A20

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Annex I

Legal Framework

Section 661 of the Foreign Assistance Act, as amended, (FAA) provides that the funds used to implement this section are to be those "made available for the purpose of this Act... in

(1) facilitating open and fair access to natural resources of interest to the United States and

(2) stimulation of reimbursable aid programs consistent with Part I of this Act. Any funds used for purposes of this section may be used notwithstanding any other provision of this Act".

The "notwithstanding" clause removes Section 661 from the mandatory prohibitions of Section 116 of the FAA (i.e., no assistance to countries which have a consistent pattern of gross violations of internationally recognized human rights unless the assistance meets basic human needs). However, the statutory language clearly indicates Congressional intent that implementation of Section 661 should be consistent with Part I of the Foreign Assistance Act. One of the principal goals of U.S. development policy is "the encouragement of development processes in which individual civil and economic rights are respected and enhanced". Moreover, Section 502B provides that: "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries".[1] Since Section 661 assistance should be consistent with Part I, we should be able to show that RDP programs take human rights into account in some fashion. Therefore, human rights review would appear to be a useful mechanism for this purpose.

Presidential Directive 30 also is relevant to this issue. It states that a major objective of U.S. foreign policy is to promote the observance of human rights by using the full range of diplomatic tools. It also provides that countries with poor or deteriorating human rights conditions will receive less favorable consideration in the allocation of foreign assistance. Human rights review of RDP programs would further the mandates of PD-30.

Section 607 programs are conducted on an advance of funds or reimbursement basis and therefore do not constitute assistance within the meaning of Section 116 of the FAA. However, Section 607 programs must be "consistent with and in furtherance of the purposes of Part I and within the limitations of this Act...". Therefore, the same human rights considerations discussed above in connection with Section 661 are relevant to Section 607.

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[1] Section 502B is relevant to the overall issue of U.S. human rights policy although it is not in Part I of the FAA. (Section 202(b) of the FAA of 1971 provides, inter alia, that reference to Part I of the FAA shall be deemed to be references to Chapter 4 of Part II. However, the provisions of Section 502B are in Chapter 2 of Part II.)

Annex II

PROPOSED RDP REVIEW PROCEDURE

1. In making the judgments required under paragraphs 3 and 5 below, members of the Working Group will take into account the following considerations:

A. RDP's activities are financed by recipient governments and therefore constitute support for U.S. exports.

B. There is no legislative requirement that RDP's activities be subjected to the same human rights review as AID and MDB projects.

C. There is no legislative or policy requirement that all RDP's activities meet BHN criteria.

2. On September 1, RDP will submit to the Working Group a list of those countries in which it plans to be active during the first half of the coming fiscal year. On March 1, RDP will submit a similar list covering the second half of the fiscal year.

3. Based on these lists, the Working Group will inform RDP prior to September 15 and March 15 of the names of those countries where, in the judgment of one or more members, initiation or continuation of RDP activities could raise questions.

4. RDP will submit brief reports to the Working Group on April 1 and October 1 on each of these countries. The reports will cover RDP's activities in the countries during the previous six months and those contemplated for the subsequent six months. The Working Group will then provide RDP with clearances by October 15 and April 15.

5. If the Working Group does not arrive at a consensus, the issue will be decided by a recorded majority vote of the representatives of those agencies and bureaus present; the minority retains the right of appeal to the full Interagency Group. If the Interagency Group is not scheduled to meet within two weeks, an action memorandum will be sent within ten days to the Deputy Secretary for his decision.

6. If during a six month period RDP plans to initiate any new activities in countries not included in the previous list submitted to the Working Group, it should immediately seek a clearance. If the Working Group does not respond within 5 working days, then clearance may be assumed.

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